

SHARRON HIGGS,)
)
Plaintiff,)
)
vs.) Case No. 4:04CV1479 RWS
)
EMC MORTGAGE CORP. et al.,)
)
Defendants.)

This matter is before me on defendants' motion to dismiss this action with prejudice for plaintiff's failure to comply with the terms of the settlement agreement. I have now reviewed all materials submitted by both parties in connection with this issue, and I find that plaintiff's complaint should not be dismissed at this time for failing to comply with the settlement agreement. At the hearing on August 28, 2006, defense counsel agreed to cooperate with plaintiff on the issue of allowing her to obtain homeowner's insurance instead of escrowing funds for this purpose. This representation was made to the Court on the record and is binding on defendant through counsel. Plaintiff has submitted evidence that she has obtained insurance and has made a mortgage payment for September. This demonstrates that she is attempting to comply with the terms of the settlement agreement. For this reason, I will order both parties to comply with the settlement

agreement as follows:

The parties shall execute the loan modification agreement and accompanying documents (which shall be revised as ordered below) as soon as practicable in my courtroom;

Defendant EMC shall modify its loan modification agreement to remove any provision requiring it to collect and escrow funds for insurance. EMC is still permitted, however, to escrow funds for taxes;

Defendant EMC shall remove the confidentiality provision from its Settlement Agreement and Mutual Release as I do not find it is “reasonably requested” under the terms of the Memorandum of Settlement signed by the parties on May 25, 2006; and

Defendant shall file a copy of all revised loan modification documents, including the Settlement Agreement and Mutual Release, with the Court as soon as they are ready for execution. The Court will then review them for accuracy and set a closing date.

Plaintiff must bring any required checks or documentation with her to the closing at the courthouse and execute the loan modification documents at that time or her case will be dismissed. At the time defendant EMC files the loan documents with the Court, it shall also provide plaintiff with written notice of any

checks (including the amount) or documentation that she is required to bring to the closing.

Accordingly,

IT IS HEREBY ORDERED that EMC's motion to dismiss [#86] is denied.

IT IS FURTHER ORDERED that EMC shall revise and file the loan modification documents in accordance with this Order as soon as practicable.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 2nd day of November, 2006.